PRIVY COUNCIL REPORT

Dow Jones Publishing Co (Asia) Inc v Attorney General of Singapore

PRIVY COUNCIL (ON PETITION FROM SINGAPORE)
LORD BRIDGE OF HARWICH, LORD ROSKILL, LORD ACKNER, LORD JAUNCEY OF TULLICHETTLE AND LORD LOWRY
5 OCTOBER 1989

Civil Procedure - Appeal to the Privy Council - Petition for special leave to appeal - Whether petition should be dismissed - Constitution of the Republic of Singapore, art 100 - Singapore Act 1966 [UK], s 3 - Republic of Singapore (Appeals to Judicial Committee) Order 1966 (SI 1966 No 1182) - Judicial Committee Act (Cap 148, 1985 Ed), s 3 - Judicial Committee (Amendment) Act 1989, s 4

Constitutional Law - Whether Constitution prohibited power of legislature to abolish or curtail appeals to Privy Council

The petitioner applied in the High Court for two orders of certiorari to quash the decisions made by the Minister of Communications and Information relating to the *Asian Wall Street Journal*. The applications were dismissed and this was confirmed by the Court of Appeal [[1988] 2 MLJ 414; [1989]2 MLJ 385]. The petitioner now sought leave to appeal from that judgment. The Attorney General applied by way of motion for the dismissal of the application for leave on the ground of want of jurisdiction. The Attorney General argued that the jurisdiction of the Judicial Committee to entertain appeals from the Singapore courts is governed by statute, which is the relevant 'written law' in art 100 of the Constitution. The jurisdiction of that court to entertain the petition for special leave to appeal is expressly excluded by the terms of the Singapore statute as amended. The petitioner submitted that the jurisdiction of the Judicial Committee was still governed by the terms of the Republic of Singapore (Appeals to Judicial Committee) Order 1966, which had not been amended, and in any event, the Singapore legislation could not constitutionally revoke what was described as 'the special leave jurisdiction'.

Held, dismissing the petition for special leave to appeal:

(1) The court was unable to agree with the arguments of the petitioner. The Republic of Singapore (Appeals to Judicial Committee) Order 1966 ('the 1966 Order in Council') is mere machinery to give effect to arrangements made between Her Majesty's Government and the President of the Republic of Singapore to enable the Judicial Committee to act as the final Court of Appeal so far as Singapore law allows. This is clear from the concluding words of s 3 of the Singapore Act 1966, 'in accordance with any provision of [the laws of Singapore]'.

(2) The submission made by reference to a 'special leave jurisdiction' is misconceived. The relevant jurisdiction is purely statutory and is in no way derived from the prerogative of the Crown.

(3) There is nothing in the Constitution of Singapore which in any way restricted the power of the Singapore legislature to curtail or abolish the jurisdiction of the Judicial Committee. The words of the new s 3(3) of the Judicial Committee Act are clear.

Legislation referred to
Constitution of the Republic of Singapore art 100
Judicial Committee Act (Cap 148, 1985 Ed) s 3
Judicial Committee (Amendment) Act 1989 s 4
Republic of Singapore (Appeals to Judicial Committee) Order 1966 (SI 1966 No 1182)
Singapore Act 1966 [UK] s 3

Sir Godfray Le Quesne QC for the Attorney General.
Louis Blom-Cooper QC for the petitioner.

Cur Adv Vult

Lord Bridge of Harwich (delivering the judgment of the court): On 20 July 1989 their Lordships heard a motion by the Attorney General for Singapore that this petition for special leave to appeal be dismissed for want of jurisdiction. Their Lordships announced their conclusion that they had no jurisdiction to entertain the petition and indicated that they would give their reasons later. This they now do.

The petitioner applied in the High Court of Singapore for two orders of certiorari to quash decisions made by the Minister of Communications and Information relating to the Asian Wall Street Journal. The applications were dismissed by Sinnathuray J [see *Re Dow Jones Publishing Co (Asia) Inc's Application* [1988] 2 MLJ 414] on 15 May 1988 whose decision was affirmed by the Court of Appeal in Singapore in a reserved judgment delivered on 1 June 1989 [see *Dow Jones Publishing Company (Asia) Inc* v *Attorney General* [1989] 2 MLJ 385]. The petitioner seeks special leave to appeal from that judgment.

The Republic of Singapore is an independent sovereign state and the jurisdiction of the Judicial Committee of the Privy Council to entertain appeals from the Supreme Court of Singapore is purely statutory. The combined operation of Singapore and United Kingdom legislation has the effect of constituting the Judicial Committee the final Singapore Court of Appeal. Article 100 of the Constitution of Singapore provides:

> (1) The President may make arrangements with Her Majesty for reference to the Judicial Committee of Her Britannic Majesty's Privy Council of appeals from the Supreme Court.
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> (2) Any appeal under this Article shall be subject to such conditions as to leave or otherwise as may be prescribed by any written law or by or under the enactments regulating the proceedings of the Judicial Committee of Her Britannic Majesty's Privy Council.

To enable effect to be given in United Kingdom law to arrangements made pursuant to art 100 of the Constitution of Singapore, s 3(1) of the Singapore Act 1966 provides:

> Her Majesty may by Order in Council confer on the Judicial Committee of the Privy Council such jurisdiction and powers in respect of appeals from ... any ... court having jurisdiction under the laws of Singapore, as appear to Her Majesty to be appropriate for giving effect to any arrangements made in that behalf between Her Majesty's Government in the United Kingdom and the government of Singapore in accordance with any provisions of those laws.

The Republic of Singapore (Appeals to Judicial Committee) Order 1966 (SI 1966 No 1182) ('the 1966 Order in Council'), made under s 3 of the Singapore Act of 1966, enables the Judicial Committee to exercise jurisdiction appropriately in terms which mirror and reflect the provisions of the relevant Singapore statute, the Judicial Committee Act [Cap 148, 1985 Ed]. Section 3 of that Act, in its unamended form, provides:

> (1) An appeal shall lie from the appellate court to the Judicial Committee with the leave of the appellate court granted in accordance with the provisions of section 4 of this Act
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> (a) from any final judgment, decree or order in any civil matter where
> (i) the matter in dispute in the appeal amounts to or is of the value of five thousand dollars or upwards; or
> (ii) the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right of like amount or value; or
> (iii) the case is from its nature a fit one for appeal; and
> (b) from any interlocutory judgment or order which the appellate court considers a fit one for appeal; and
> (c) from any decision in the exercise of any original or advisory jurisdiction conferred on the appellate court.
>
> (2) An appeal shall also lie from the appellate court to the Judicial Committee in the following cases, namely:
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> (a) in any case mentioned in subsection (1) of this section where the leave of the appellate court has not been duly obtained; and
> (b) in any case arising in a civil matter other than the cases referred to in subsection (1) of this section; and
> (c) in any criminal matter,
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> where application for special leave to appeal has been made to the Judicial Committee, and the Judicial Committee has granted special leave to appeal.

On 21 April 1989 the Judicial Committee (Amendment) Act 1989 ('the Act of 1989') came into force in Singapore enacting a new sub-s (3) to follow sub-ss (1) and (2) of s 3 of the Judicial Committee Act ('the principal Act') which provides:

> (3) Notwithstanding subsections (1) and (2), no appeal shall lie from the appellate court to the Judicial Committee in any case arising in a civil matter except between those parties to the proceedings who have at any time before the hearing of the case by the appellate court consented in writing to be bound by an appeal to the Judicial Committee in that case; and the appeal shall not affect any party to the proceedings who has not so consented.

The transitional provisions of the Act of 1989 are contained in s 4 which provides:

> This Act shall not apply to any appeal, application for leave or application for special leave to appeal made under the principal Act against any decision of the appellate court given before the commencement of this Act; and the principal Act shall continue to apply to such appeal, application for leave or application for special leave to appeal as if this Act had not been enacted.

The submission made by Sir Godfray Le Quesne QC, for the Attorney General, may be very shortly summarized. The jurisdiction of the Judicial Committee to entertain appeals from the Singapore courts is governed by the Singapore statute, which is the relevant 'written law' referred to in art 100 of the Constitution. The decision sought to be appealed against was given after the commencement of the Act of 1989. The transitional provisions in s 4, therefore, have no application. The parties to the appeal to the Court of Appeal in Singapore did not, before the hearing of the case by that court, consent in writing to be bound by an appeal to the Judicial Committee. It follows that the jurisdiction of the Judicial Committee to entertain the petition for special leave to appeal is expressly excluded by the terms of the Singapore statute as amended.

Mr Blom-Cooper QC, for the petitioner, submitted that the jurisdiction of the Judicial Committee was still governed by the terms of the 1966 Order in Council, which has not been amended, and that, in any event, the Singapore legislation could not constitutionally revoke what he described as 'the special leave jurisdiction'.

Their Lordships were unable to accede to either submission. The 1966 Order in Council is mere machinery to give effect to arrangements made between Her Majesty's Government and the President of the Republic of Singapore to enable the Judicial Committee to act as the final Court of Appeal from the Singapore courts so far as Singapore law allows. This is clear from the concluding words of s 3 of the Singapore Act 1966 'in accordance with any provision of [the laws of Singapore]'. Once the scope of the jurisdiction is restricted by the Singapore legislation the Judicial Committee can only act within that restriction. The submission made by reference to a 'special leave jurisdiction' is misconceived. The relevant jurisdiction of the Judicial Committee is, as already stated, purely statutory and is in no way derived from the prerogative of the Crown exercised by Her Majesty in Council. Moreover, there is nothing in the Constitution of Singapore which in any way restricts the power of the Singapore legislature to curtail or abolish the jurisdiction of the Judicial Committee to entertain appeals from the courts of Singapore. The language of the new sub-s (3) of s 3 of the Singapore Judicial Committee Act is perfectly clear and unambiguous and is equally effective to restrict the appeals to the Judicial Committee which may be brought either by leave of the appellate court under sub-s (1) or by special leave of the Judicial Committee under sub-s (2).

Their Lordships understand the petitioner's sense of grievance that, after the appeal from the judgment of Sinnathuray J had been argued and at a time when it was known that the Act of 1989 would shortly come into operation, the Court of Appeal in Singapore did not accede to an invitation to give their decision promptly, if necessary giving their reasons later, which would have enabled the petitioner to take advantage of the transitional provisions

in the Act of 1989. This consideration could not, however, properly affect the outcome of the Attorney General's motion. It is for these reasons that the petition must be dismissed.

Petition dismissed.

Solicitors: *Simon Muirhead & Burton; Jaques & Lewis.*

Reported by *Terence Tan Bian Chye*

SINGAPORE REPORTS

Liew Kim Yong v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) - CRIMINAL APPEAL NO 5 OF 1987
SINNATHURAY AND LAI KEW CHAI JJ AND GRIMBERG JC
30 JUNE 1989

Evidence - Burden of proof at end of prosecution's case - Inconsistencies in witness's evidence - Whether taken into account by judge - Whether judge took into account witness's intoxication - Corroboration - Whether self-corroboration possible - Whether victim's distress could amount to corroboration - Criminal Procedure Code (Cap 68, 1985 Ed), s 121(6) - Evidence Act (Cap 97, 1985 Ed), s 159

Criminal Procedure - Appeal against conviction and sentence - Evidentiary issues - Sentence for rape - No aggravating features present - Allergy of the appellant to pain-killing drugs - Whether relevant to sentence of caning

Criminal Law - Rape - Abetment of rape

The appellant was convicted of raping the complainant and of abetting the rape of the complainant by another man. The appellant was convicted on both charges and sentenced to seven years' imprisonment and six strokes of the cane on the charge of rape, and seven years' imprisonment on the abetment charge, both sentences to run concurrently. He appealed against both his conviction and his sentence. The appellant appealed against sentence on the grounds that there had been no violent assault, no weapon used, no threats and the relationship between the appellant and the complainant prior to the offence had been pleasant.

Held, dismissing the appeals against conviction and sentence:

(1) The court was bound by the decision in *Haw Tua Tau*[1] as to the burden of proof required at the end of the prosecution's case. It was plain on the face of the record that when the prosecution here concluded, a case had been made out which if unrebutted would have warranted the appellant's conviction.

(2) Once this hurdle was passed, the trial judge was entitled to set the appellant's version of the events against that of the complainant. It is evident that he did so with considerable care.

(3) As to the principal inconsistencies in the complainant's evidence, the trial judge was alive to them. The fact that no injuries were found on the complainant, except on her shoulders, did not raise a reasonable doubt in the judge's mind as to the complainant's credibility.

(4) The argument that the judge had failed to take into cognizance the absence of a 'fresh complaint' of the complainant was dismissed, as the judge found that the complainant had complained 'as soon as she could'.

(5) The judge had also not ignored the fact that the complainant was slightly intoxicated.

(6) A plain reading of s 159 of the Evidence Act showed that the complainant's complaint to her sister over the phone and to her mother and sister were admissible as corroboration of the complainants own evidence. This evidence not only confirmed in material particulars that the complainant had been raped, but also that the appellant had raped her.